IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

Crl.MC.No. 2345 of 2006()

CRIME NO.280 OF 2005 FILED BY THE KUTHIATHODU POLICE BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE, CHERTHALA

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PETITIONER:

K.F.SIMON,
S/O.FRANCIS, AGED 46 YEARS, KAMBOLATH HOUSE,
EZHUPUNNA VILLAGE, EZHUPUNNA MURI,
CHERTHALA TALUK.

BY ADV. SRI.M.P.KRISHNAN NAIR

RESPONDENTS:

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1. STATE OF KERALA,
REP.BY SUB INSPECTOR OF POLICE,
KUTHIATHODU, THROGUH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. ANTONY, S/O.JOSEPH,
AZHINACKAL HOUSE, EZHUPUNNA VILLAGE,
ERAMALLOOR MURI, CHERTHALA TALUK,
LAPPUZHA DISTRICT, NOW RESIDING AT K.D.FLAT
KALAMASSERY SOUTH, PIN-683109.

3. SHINY,
W/O.ANTONY, AZHINACKAL HOUSE, EZHUPUNNA VILLAGE,
ERAMALLOOR MURI, CHERTHALA TALUK,
ALAPPUZHA DISTRICT, NOW RESIDING AT K.D.FLAT,
KALAMASSERY SOUTH, PIN-683109.

4. K.S.JOHNSON,
S/O.SEBASTIAN, KARIKODATH HOUSE,
EZHUPUNNA SOUTH MURI, KODAMTHURUTHU VILLAGE,
CHERTHALA TALUK, ALAPPUZHA DISTRICT.

BY ADV. SRI.C.K.SAJEEV
PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 06/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2345 of 2006

Dated this the 6th day of February, 2007

ORDER

The petitioner is the 1st accused in a prosecution, inter alia, under Sections 465 and 471 I.P.C. Cognizance has been taken on the basis of a final report submitted by the police. The 4th respondent herein is the 2nd accused.

2. The 2nd and 3rd respondents are the brother-in-law and sister of the petitioner herein. They had lodged the complaint, on the basis of which, the police commenced investigation. They alleged that the 3 accused persons in collusion had created a false document to make it appear that they, ie. the 2nd and 3rd respondents, had executed Annexure -A1 agreement to sell their property to the 4th respondent, ie. the 2nd accused. The 4th respondent in turn had allegedly entered into Annexure-A2 agreement to sell the property to the petitioner/the 1st accused.

2. The crux of the contention is that the said agreement for sale (Annexure-A1) is forged by the petitioner in collusion with the 4th respondent and the 3rd accused. The petitioner along with the 3rd accused are attestors to Annexure-A1 agreement. Investigation is complete. Charge sheet has already been filed. The petitioner has entered appearance before the learned Magistrate through counsel.

The petitioner has rushed to this Court with this petition praying that powers under Section 482 Cr.P.C may be invoked to prematurely terminate the prosecution initiated against the petitioner on the basis of the final report submitted by the police.

3. What are the reasons ? Two reasons are urged. First of all it is contended that the allegations raised are totally false. Secondly it is contended that the petitioner has already initiated a civil suit O.S.No.96 of 2005 against respondents 2 to 4 claiming specific performance of Annexures-A1 and A2 agreements. Simultaneous prosecution of the suit and the criminal case would result in injustice, it is contended.

4. I am not persuaded to agree with the contentions. Powers under Section 482 Cr.P.C are to be invoked sparingly and in exceptional cases in aid of justice. I shall scrupulously avoid any detailed discussion on merits about the acceptability of the allegations or the probabilities. I do however take note of the fact that the petitioner claims to have obtained the property belonging to his sister and brother-in-law through the 4th respondent by virtue of an agreement-Annexure-A1 in which the petitioner himself is an attestor along with the 3rd accused. Disputed questions of fact cannot be attempted to be resolved by invocation of the jurisdiction of this Court under Section 482 Cr.P.C. The mere pendency of a civil suit is

certainly not a justifiable reason for quashing of a criminal prosecution initiated.

5. Having considered all the relevant inputs, I am certainly convinced that this is not a fit case where the extra ordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C can or ought to be invoked. The petitioner must appear before the learned Magistrate. He can claim discharge at the stage of Section 239/240 Cr.P.C. If the petitioner wants to claim discharge, the learned Magistrate, needless to say, must consider in accordance with law all the relevant inputs and take appropriate decision under Section 239/240 Cr.P.C.

6. In the result, this Crl.M.C is, dismissed.

(R.BASANT, JUDGE)

rtr/-